

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Public Inquiry Concerning the
Terms of 39 U.S.C. 404(d)

Docket No. PI2016-2

ORDER DENYING MOTION FOR EXTENSION OF
REPLY COMMENT DEADLINE

(Issued April 7, 2016)

I. BACKGROUND

On December 10, 2015, the Commission established Docket No. PI2016-2 to invite public comment on the interpretation of terms related to the Commission's jurisdiction over Postal Service closings and consolidations of post offices pursuant to 39 U.S.C. § 404(d).¹ Order No. 2862 established the procedural schedule for this proceeding, requiring comments be filed no later than January 29, 2016, and reply comments be filed no later than February 23, 2016. Order No. 2862 at 10.

On January 27, 2016, the Postal Service filed a motion in the above-captioned docket requesting that the deadline for filing initial and reply comments be extended

¹ Notice and Order Seeking Comments on Commission Jurisdiction over Postal Service Determinations to Close or Consolidate Post Offices, December 10, 2015 (Order No. 2862).

until February 5, 2016, and March 1, 2016, respectively.² The Postal Service cited severe weather conditions in the Washington, DC area, closure of the Postal Service's headquarters, and resulting significant staff shortages as the basis for its request to extend the filing dates. Postal Service Motion at 1. The Postal Service also spoke with, and received no opposition to its extension request from, the Public Representative.³ On January 28, 2016, the Commission granted the Postal Service Motion.⁴

On February 22, 2016, the Postal Service filed a second motion in the above-captioned docket requesting that the deadline for filing reply comments be extended from March 1, 2016, to March 29, 2016.⁵ The Postal Service indicated that the extension was needed because its efforts and resources were devoted to producing detailed information pertaining to its Annual Compliance Review and its Annual Report filings in Docket No. ACR2015. Postal Service Second Motion at 1. The Postal Service represented that it had again spoken with and received no opposition from the Public Representative. *Id.* at 2. The Postal Service also represented that it "successfully contacted all other parties who have filed comments in this docket" with the exception of Elaine Mittleman. *Id.* The Commission accepted the Postal Service's reasoning and found that extending the reply comment deadline 20 business days would not prejudice any parties.⁶

² Motion of the United States Postal Service for Extension of Time to File Initial Comments, January 27, 2016 (Postal Service Motion).

³ *Id.* at 1-2. At the time, there were only two other interested parties who had filed comments, Mark I. Jamison and Credit Management.

⁴ Order No. 3054, Order Granting Motion to Extend Comment Deadline, January 28, 2016, at 2. The original reply comment deadline was February 23, 2016. Order No. 2862 at 10.

⁵ Motion of the United States Postal Service for Extension of Time to File Reply Comments, February 22, 2016, at 1 (Postal Service Second Motion).

⁶ Order Granting Motion for Extension of Reply Comment Deadline, February 24, 2016, at 2 (Order No. 3097).

II. INSTANT REQUEST TO EXTEND

On March 29, 2016, at the reply comment deadline, Elaine Mittleman filed a motion for an extension of the reply comment deadline.⁷ In her Request for Extension, Ms. Mittleman asks the Commission to extend the reply comment deadline to April 12, 2016, stating work on other matters and a desire to do additional research as the basis for the extension request. Request for Extension at 1. Ms. Mittleman states she has contacted the Postal Service but has been unable to speak with a Postal Service representative regarding this matter. *Id.*

III. COMMISSION ANALYSIS

Under its rules of practice and procedure, the Commission may grant extensions of time “for good cause shown.” 39 C.F.R. § 3001.16. On March 29, 2016, Ms. Mittleman filed her Request for Extension 90 minutes before the comment deadline⁸ and used reasons known to her well before the deadline to support her Request for Extension.

The Commission established the current reply comment deadline in this docket on February 24, 2016, over a month prior to the deadline. Order No. 3097 at 2. Ms. Mittleman has had ample opportunity to prepare comments or request an extension well before 3 p.m. on the date reply comments were due, and such delay is problematic. Ms. Mittleman has not shown good cause why her Request for Extension should be granted. She has not provided a valid explanation for why she filed her extension so late in the proceeding;⁹ she fails to provide a legitimate reason justifying her need for

⁷ Motion of Elaine Mittleman for Extension of Time to File Reply Comments, March 29, 2016 (Request for Extension).

⁸ See Order No. 3097 at 2.

⁹ See Request for Extension.

the extension; and she does not show how her Request for Extension does not prejudice the other four parties, who timely filed their reply comments.¹⁰

The Postal Service requests to extend the comment deadlines in which the requested extensions were thoroughly explained, filed well in advance of applicable deadlines and given the timing did not prejudice any person or party. Conversely, Ms. Mittleman's Request for Extension fails to provide good cause for why she did not file her reply comments in adherence with the set schedule; and failed to file with sufficient time to avoid potential prejudice to other parties. See Request for Extension. Though she does reference a need to attend to other matters, including a brief in Federal court,¹¹ Ms. Mittleman knew or should have known of the March 29, 2016 reply comment deadline, as she has been involved in the instant docket since February 5, 2016, when she filed initial comments.¹² Ms. Mittleman's statement that she had been working on other matters (presumably up to the final hours before the reply comment deadline) is insufficient to justify why she was unable to meet the established reply comment deadline or file a timely extension request, especially since the Commission issued two orders extending the reply comment deadline to the current date of March 29, 2016.

Granting Ms. Mittleman's Request for Extension would potentially prejudice the other parties, who filed their reply comments in a timely fashion. Extending the deadline could unfairly afford Ms. Mittleman the benefit of the work and arguments presented in

¹⁰ The four other parties are: the United States Postal Service (see United States Postal Service Reply Comments on the Interpretation of Terms Related to 39 U.S.C. § 404(d), March 29, 2016); the Public Representative (see Public Representative's Reply Comments on the Commission's Ability to Review Postal Service Determinations to Close or Consolidate Any Post Office, March 29, 2016); the National Association of Postmasters (see Reply Comments of the National Association of Postmasters of the United States, March 29, 2016); and Steve Hutkins (see Reply Comments of Steve Hutkins on the Commission's Jurisdiction Over Post Office Closings, March 29, 2016).

¹¹ See Request for Extension at 1.

¹² Comments of Elaine Mittleman on the Commission's Jurisdiction to Review Postal Service Determinations to Close Post Offices, February 5, 2016; see also Supplemental Comments of Elaine Mittleman on the Commission's Jurisdiction to Review Postal Service Determinations to Close Post Offices, February 17, 2016.

the other parties' filings. This is in contrast to the circumstances the Postal Service's extension requests, each being filed in advance of the comment and reply comment deadlines. The Commission thus found these extensions would not prejudice or adversely affect any party.

Having failed to show good cause for an extension, the Request for Extension is denied.

IV. ORDERING PARAGRAPH

It is ordered:

Elaine Mittleman's Request for Extension, filed March 29, 2016, is denied.

By the Commission.

Stacy L. Ruble
Secretary